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IN THE
COURT OF APPEALS OF INDIANA

WESLEY K. FILES,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-0804-CV-145
	)	
REBECCA R. DEMEESTER	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jenny Pitts-Manier, Judge
Cause No. 71D04-0212-DR-705

September 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Wesley K. Files (Father) appeals the denial of his request for child support from Rebecca R. Demeester (Mother), his former wife and the mother of his two children.

We affirm.

The facts favorable to the ruling are that Mother and Father were married in 1983. Their first daughter, Amanda, was born that year and their second daughter, Kendra, was born approximately three years later in 1986. The parties divorced in 1994. Pursuant to the decree of dissolution, the parties shared joint legal custody of the children and Mother was awarded physical custody of both. Father was ordered to pay $120.00 in weekly child support. Although the Settlement Agreement called for Father to pay his obligation through the clerk of the court, Father paid Mother directly via personal checks. Mother never challenged that deviation from the decree.

In January 2001, Father moved to Texas and Amanda went to live with him a few weeks later. Kendra remained in Indiana with Mother. According to Father, because each parent at that time enjoyed physical custody of one child, they informally (i.e., without court intervention) agreed that his support obligation would be reduced to $30.00 per week. At the hearing on the motion that is the subject of the instant appeal, however, Mother denied entering into any such agreement. In fact, in December 2001, she initiated proceedings to collect what she then claimed was an arrearage, representing the difference between what Father was ordered to pay ($120) and what he did pay ($30) over that period of time. The resolution of that question is not critical to this appeal.

In November 2002, Kendra moved to Texas to live with her father and sister. At that time, Father filed the Petition to Modify Custody and Support that is the subject of the instant

appeal. Following a February 25, 2003 hearing, the trial court entered the following order:

> The parties present to the Court their agreement concerning certain matters, which agreement is approved.
>
> The Court now enters the following order:
>
> 1. Custody of the parties' two (2) children, Kendra and Amanda, shall be reposed in Respondent [i.e., Father].
>
> 2. Respondent's child support obligation is terminated, effective immediately. The State shall submit for execution and entry by the Court an Order terminating the income withholding order currently in place.
>
> 3. Any payments that are received and distributed by the Clerk pursuant to the Income Withholding Order after February 25, 2003, shall be credited against Respondent's child support arrearage.
>
> 4. Further hearing on the issues of Respondent's child support arrearage and Petitioner's child support obligation is set for March 25, 2003 at 9:00 A.M.

Appellant's Appendix at 20. CCS entries reflect almost no activity in the case for approximately the next four years. In fact, those entries support the following assessment made by the trial court: "The parties, and not the Court, are responsible for the long delay. The matter languished for a period of in excess of three (3) years at one time, and was repeatedly continued for hearing by agreement of the parties." *Id*. at 3.

The parties did not appear in court again until September 28, 2007. In the interim, Mother never paid child support to Father, and Father never paid any portion of the arrearage to Mother. Meanwhile, at some point while the children were still in school in Texas, they adopted Father's mother's residence as their legal residence in order to attend a desired school. During that time, Father gave money to his mother to help defray the expense of sheltering the girls, but Mother did not contribute to the support of her children.

The older daughter, Amanda, was emancipated on May 18, 2004 when she married. At some point, "for a period of time," *Appellant's Appendix* at 4, Kendra returned to live in Indiana, living alternately with Mother and with other relatives in the area. Although Father made no support payments to Mother during that time, he did make payments to the other relatives with whom Kendra stayed. Kendra had returned to Texas by September 2005. She was emancipated in approximately July 2007.

The hearing from which the decision under appeal emanates was held approximately three months later, on September 28, 2007. Following that hearing, the court determined that as of December 12, 2001, which was the date Mother filed affidavits claiming an arrearage existed, Father was in fact $4040.00 in arrears.[1] The court also found that Father's $120-per-month support obligation terminated on February 25, 2003, as set out in the trial court's order of that date. Moreover, the court determined that Father gained de facto physical custody of both children on November 20, 2002, which is the day Kendra joined Amanda with Father in Texas. Therefore, the court determined that he was "entitled to credit equal to his obligation for non-conforming payments made between November 22, 2002 and February 25 2003[.]" *Id*. at 5. The trial court calculated that Father paid $1590.00 during that time in such non-conforming payments. Additionally, the trial court noted that Father's income tax refunds for the years 2003-2007, totaling $6261.00, were intercepted and disbursed to Mother. Ultimately, the court determined that Father owed Mother the amount of support arrearage that existed as of February 25, 2003, i.e., $2029.00, explaining:

> In this case, there is no post-emancipation need of support. Additionally, given that the children in this case moved between the homes (or at least locales) of their parents during the period between February, 2003 and June, 2007, and the advantages to each parent to allowing further hearing on the Petition to continue to pend and thereby avoid the imposition of a court order directing the payment of child support, concerns exist in this case as to whether entertainment of the Petition at this point in time, involve the Court in the "obstructive strategy" of one or the other.

Id. at 8-9. The court further explained:

> The children are emancipated: during their minority from and after February 2003, neither party made any substantial effort to seek the various resolutions to the various obligations of the parties under the various circumstances obtaining at any one time. … The parties have failed timely to address these issues. The Court determines that any rights in and to support after February 23, 2005[2] have long since been abandoned by each party.

Id. at 6. In effect, the trial court ordered that neither party owed child support to the other for that period of time.

Father contends the trial court erred in denying his motion to modify child support for the period following the filing of that motion, i.e., after November 27, 2002. We review trial court rulings on motions to correct error for an abuse of discretion. *In re Sale of Real Property with Delinquent Taxes or Special Assessments,* 822 N.E.2d 1063 (Ind. Ct. App. 2005), *trans. denied*; *see also Lighty v. Lighty*, 879 N.E.2d 637 (Ind. Ct. App. 2008) (when reviewing a ruling on a motion to correct error, we also consider the standard of review for the underlying motion – here a petition to modify child support, which is also reviewed for

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[1] We note that although the court found Father to be in arrears in that amount as of that date, it described the evidence supporting that determination as "slim", consisting of Mother's affidavit and the fact that "Father seems to concede it, albeit reluctantly." *Id.* at 5.

[2] This is the only place in the record that the date February 23, 2005 is mentioned, so its significance is not clear. We think it likely that this is in fact a scrivener's error, and that the date should be February 25, 2003, the date Father was awarded physical custody of the children. In any event, our decision is the same regardless of which is the correct date.

abuse of discretion, *Kraft v. Kraft*, 868 N.E.2d 1181 (Ind. Ct. App. 2007)). "An abuse of discretion occurs when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom, or is based on impermissible reasons or consideration." *Johnson v. Johnson*, 882 N.E.2d 223, 226 (Ind. Ct. App. 2008).

In considering Father's claims, it is helpful to review exactly what the court did here. In effect, the trial court divided the relevant time (i.e., the years that followed the dissolution) into two periods. The first period ran from the date of dissolution until February 25, 2003, when Father's child support obligation was legally terminated. The second period ran from February 25, 2003 until approximately June 2007, when the second child was emancipated. The court's ruling with respect to the first period is not challenged upon appeal. To review, the trial court determined that Father had a specific weekly support obligation throughout the first period, and that he conceded there had been an arrearage of $4040.00 as of December 12, 2001. After subtracting non-conforming support payments Father made between November 22, 2002 (the date Father became de facto custodian of both children) and February 25, 2003, the Court determined that Father had an arrearage of $2029.00 at the end of the first period. It appears that Father does not challenge that determination. Therefore, we focus our attention on the trial court's determination with regard to the second period. With respect to that period, the court determined basically that neither party was obligated to pay child support to the other.

Father contends the trial court's order was based upon the following faulty premises:

(1) a parent can abandon a claim for child support through laches; (2) a court may not enter a child support order after the children have been emancipated; and (3) the court would have to "'pretend' hearings occurred during the progress of the children in and out of their parents home and in their progress towards maturation and emancipation and 'formulate' the potential outcomes of such hearings." *Appellant's Appendix* at 6.

In a thoughtful, carefully reasoned explanation of its decision, the trial court explicitly disclaimed the first of Father's complaints, i.e., that the decision was a denial of an effort to collect a support arrearage based upon laches: "Is this a fair outcome? *The law is clear that the doctrine of laches does not apply to the effort to collect on a past due support order*." *Id.* at 6 (emphasis supplied). The court's explanation reflects that it did not consider this proceeding as primarily an effort on Father's part to collect support. Rather, the trial court viewed it as an attempt to *establish* a support obligation in the first place. Upon that basis, the trial court determined that case law forbidding laches in the child support setting has no application here. We need not hold that laches, as that concept has traditionally been understood, does apply here in order to affirm the trial court's holding. In reading the trial court's decision, we understand it to be based upon something in addition to the parties' lack of diligence. Although we are admittedly reading between the lines, we think the trial court may also have believed it could not make a reliable determination regarding the relevant facts at key points in the past in order to determine what would have been an appropriate amount of support at that time.

This exercise (i.e., determining what amount should have been paid at different times in the past) was necessary because there never was an existing support order. The passage of

time rendered this task unusually difficult on the facts of this case because, as the trial court noted, "the children . . . moved between the homes (or at least the locales) of their parents during the period between February, 2003 and June, 2007[.]" *Id.* at 8. Moreover, the record reflects that there were *several* moves and changes of residence during that time. It is little wonder that the trial court felt it was being asked to go back in time and reconstruct snapshots of several moments of time in the past – using incomplete and sometimes confusing evidence to do so. We think this is a significant aspect of the trial court's observation that the parties had delayed prosecuting the action for years, viz., that the passage of time had rendered the facts thus reconstructed too unreliable. For these reasons, among others, we conclude that the trial court did not decide this case in contravention of the principle that efforts to collect child support payments may not be barred by laches.

We turn now to the second of Father's claims, i.e., that the trial court proceeded upon the erroneous assumption that it could not enter a child support order after the children have been emancipated. Contrary to Father's assertion, the trial court acknowledged in its order that the opposite is the case, i.e., "[t]he law recognizes the ability to enter an educational order after emancipation if the petition was filed prior to emancipation." *Id.* at 7 (citing *Donegan v. Donegan*, 586 N.E.2d 844 (Ind. 1992). Therefore, although the court considered the fact that the children were both emancipated by the time of the hearing, it does not appear the court considered that as an absolute legal bar to entering a support order against Mother.

As to the third alleged legal error, i.e., that the court would have to "pretend" hearings were held and decide what the outcomes would have been, we have already indicated that such is a fair description of what the parties were asking the court to do. Even presuming this

to be true, however, we do not understand how such constitutes legal error.

With the foregoing in mind, we take this opportunity to step back and consider what the trial court did here, and to consider also the circumstances in which this decision was made. A dispute arose between the parties on the subject of child support and a motion was filed to resolve the matter. Then, for more than four years, the parties disengaged from the legal system and endeavored to handle the matters of child custody and support between themselves, without benefit of court mandate, supervision, or even guidance. During that time, the children moved back and forth between the parents and other relatives and, ultimately, were emancipated. It was only then, three months after the youngest child was emancipated and more than three *years* after the oldest was emancipated, that the parties – in this case, Father – sought to re-engage the judicial machinery for what amounted to the creation of a ledger book in which the court would, after the fact, assign values to items (i.e., child support in a specific amount for certain spans of time) it would enter into Mother's debit column, thereby determining how much of a tab Mother had run up. Extending the metaphor, this would culminate in an order directing Mother to settle her account. And, we reiterate, such "account" and all of its entries would literally be created after the fact.

This does not strike us as a compelling setting for arguing, in effect, that Mother should have been paying all along. Perhaps she should have been paying something more than she was. The trial court implied as much in observing, "Equity would suggest that Father's slate should be wiped clean … as he honored the spirit of his obligation to support his children, whereas Mother seemed content to avoid the imposition of a legal duty." *Appellant's Appendix* at 8. Therein lies the bottom line in this case. The court *could* have

imposed a child support obligation upon Mother, notwithstanding that the children were emancipated, and it *could* have made that order retroactive to the date Father filed his petition in November 2002. But, it was not compelled to do either. The court was entitled to determine that no support was due at all, and even if it determined support was in order, it had the discretion to make the effective date of an order of support retroactive to any date from the time of the filing of the petition "or any date thereafter." *Carter v. Dayhuff*, 829 N.E.2d 560, 568 (Ind. Ct. App. 2005) (quoting *Haley v. Haley*, 771 N.E.2d 743, 752 (Ind. Ct. App. 2002)).

Finally, we observe that the court's primary function in a child support proceeding is to protect the child's best interests. *See Naggatz v. Beckwith*, 809 N.E.2d 899, 902 (Ind. Ct. App. 2004) ("'[w]hen … support … issues are being determined, the best interests of the child are the primary consideration'") (quoting *In re Paternity of K.J.L.*, 725 N.E.2d 155, 158 (Ind. Ct. App. 2000)), *trans. denied*. We cannot discern how the children's best interests in this case were implicated at all, much less negatively so, by the trial court's ruling. Perhaps the analysis would change if the parties had more diligently pursued this issue from the beginning, or if the children had remained in one place, or the facts were more easily ascertainable. It certainly would change if one or both were not yet emancipated. We conclude, however, that on these particular facts, the trial court's decision was well within its discretion and did not contravene the well-established principle that laches does not apply in a case involving a parent's effort to collect child support.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur